14116/11

H.K. Krishna

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23RD DAY OF MAY, 2011

PRESENT

THE HON'BLE MR.JUSTICE H.N. NAGAMOHAN DAS

AND

THE HON'BLE MR. JUSTICE ARALI NAGARAJ

RFA No.421/2009

BETWEEN:

1. INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS
A SOCIETY REGISTERED UNDER THE SOCIETIES ACT, 1860, AS ALSO BOMBAY PUBLIC TRUSTS ACT, 1950
HAVING ITS OFFICE AT HARE KRISHNA LAND, JUHU, MUMBAI – 49
AND ALSO HAVING ITS BRANCH OFFICE AT HARE KRISHNA HILL CHORD ROAD, RAJAJINAGAR
BANGALORE – 10.

2. BHIMA DAS
MAJOR

3. GOPAL KRISHNA GOSWAMI
MAJOR
2 & 3 ARE HAVING THEIR OFFICE AT HARE KRISHNA LAND, JUHU
MUMBAI – 49.

HIGH COURT OF KARNATAKA BANGALORE

This certified copy [illegible] 8-2 Pages and copying charges of Rs. 246/- is received

4. JAYA PATAKA SWAMI
MAJOR, ISKCON, MAYAPUR
NADIA DT.
W. BENGAL. ... APPELLANTS

(BY Sri. UDAYA HOLLA, Sr. ADV., FOR
M/S. LEX NEXUS & Sri. K SHASHIKIRAN SHETTY,
Sri. D R RAVISHANKAR, ADVS.)

AND:

1. INTERNATIONAL SOCIETY FOR
KRISHNA CONSCIOUSNESS
A SOCIETY REGISTERED UNDER
THE KARNATAKA SOCIETIES
REGISTRATION ACT, 1960 AND
CLAIMING TO HAVE ITS
REGISTERED OFFICE AT
HARE KRISHNA HILL
CHORD ROAD, RAJAJINAGAR
BANGALORE – 10
REP. BY ITS ALLEGED SECRETARY
STOKA KRISHNA DAS.

2. VINAY KARLO AKA VIBHAV
KRISHNA DASA, MAJOR
FATHER'S NAME NOT KNOWN

3. ASHOK KUMAR GUPTA
MAJOR
FATHER'S NAME NOT KNOWN

4. B KIRAN
MAJOR
FATHER'S NAME NOT KNOWN

HIGH COURT OF KARNATAKA BANGALORE

5. SUDHIR CHAITANYA DASA
MAJOR
FATHER'S NAME NOT KNOWN

RESPONDENT NOs. 2 to 5 R/o.
No. 5, I CROSS, SRIPURAM
SHESHADRIPURAM, BANGALORE – 20
SARVAISHVARYA DASA
ISKCON, HARE KRISHNA LAND
100 FEET NEW SCHEME ROAD
COIMBATOOR, TAMILNADU.

6. SARVA AISHWARYA DASA
ISKCON, COMBATORE CENTRE
100 FEET NEW SCHEME ROAD
COIMBATORE, TAMILNADU.

7. REGISTRAR OF SOCIETIES
KARNATAKA STATE
32, JAMUNA COMPLEX
5TH MAIN ROAD, GANDHINAGAR
BANGALORE – 09.

8. STATE OF KARNATAKA
REP. BY THE COMMISSIONER
OF POLICE, INFANTRY ROAD
BANGALORE – 01. RESPONDENTS

(By Sri. S K V CHALAPATHY, Sr. ADV.
Sri. MATHAI PAIKADEY, Sr. ADV., FOR SAIJU ABRHAM VERGIS FOR
M/S. V RENJITH SHANKAR ASSOCIATES, ADVS. FOR R-1
Sri. AMARNATH SINHA, ADV., FOR R-6
Sri. K S MALLIKARJUNAIAH, GP, FOR R-7 TO 8
R-2 TO 5 SD.)

HIGH COURT OF KARNATAKA

THIS APPEAL IS FILED UNDER SECTION 96 CPC AGAINST THE JUDGMENT AND DECREE DATED 17.04.2009 PASSED IN O.S. No. 7934/2001 ON THE FILE OF THE IX ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE, PARTLY DECREEING THE SUIT FOR DECLARATION AND PERMANENT INJUNCTION.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY, NAGAMOHAN DAS. J, DELIVERED THE FOLLOWING:

JUDGMENT

This Regular First Appeal is directed against the Judgment and Decree dated 17.4.2009 in O.S.No.7934/2001 passed by the learned IX Addl.City Civil and Sessions Judge, Bangalore decreeing the suit of the plaintiff for declaration of title and injunction and dismissing the counter claim of defendants for decree of permanent injunction.

2. Appellants are defendants 1 to 4, first respondent is the plaintiff and respondents 2 to 8 are defendants 5 to 11 before the Trial Court. In this judgment, for convenience, the parties are

HIGH COURT OF KARNATAKA BANGALORE

referred to as per their status before the Trial Court. Wherever there is underlining, it is ours.

3. It is the case of plaintiff that Srila Prabhupada, a disciple of Chaitanya Mahaprabhu preached, propogated and spread the philosophy of Krishna Consciousness all over the world. From 1966 and onwards, Srila Prabhupada started a movement under the name and style "*International Society for Krishna Consciousness*" (*ISKCON*) in New York. Within a short span of time the said movement spread all over the world and, as on the date of filing the suit, there were 400 centres of ISKCON. Each ISKCON centre is a temple and presided over by the temple President. It was the desire of Srila Prabhupada that ISKCON centres are to be established all over the world and every branch shall keep its independent identity. As per the desire of Srila Prabhupada, a separate society under the name and style, '*International Society for Krishna Consciousness*' came into existence at Mumbai in the year 1971 which is the first

HIGH COURT OF KARNATAKA BANGALORE

defendant herein. It is a body registered under the Societies Registration Act, 1860 and also registered under the provisions of Bombay Public Trust Act, 1950. The registered office of first defendant is situate at Harekrishna land, Juhu, Mumbai. The first defendant has framed its Memorandum of Association and Rules and Regulations to govern its functioning.

4. Plaintiff further contends that in the year 1970 Srila Prabhupada named 12 senior disciples called as Governing Body Commission (GBC) to assist him in managing the ISKCON movement all over the world and to work spiritually under his direction. This GBC remained an unregistered body of persons, only to assist Srila Prabhupada to spread the ISKCON movement.

5. Plaintiff is a society registered under the Karnataka Societies Registration Act at Bangalore in the year 1978. It is self-made, self-developed and self-supported one by raising funds from the public in the State of Karnataka and has built up its corpus and

KARNATAKA HIGH COURT OF KARNATAKA

achieved development. The Plaintiff society got allotted item No. 1 of the plaint 'A' schedule property from the Bangalore Development Authority (for short 'BDA') under a Deed of Conveyance dated 03.08.1988. Plaintiff society, by raising funds from the devotees, constructed a temple and cultural complex on item No.1 of plaint 'A' schedule property called as '*Harekrishna Hills*'. Item No.2 of plaint 'A' schedule property is the office and residential premises of plaintiff society situate at Mysore. Plaint 'B' schedule properties are movables such as plaques, jewellery, utensils made of silver and gold and some studded with diamonds, electrical installations, vessels, pots etc. Plaint 'C' schedule properties are the bank accounts of the plaintiff society at Bangalore and Mysore. The accounts of plaintiff society are being audited regularly every year. The plaintiff society is engaged in religious, cultural and social activities.

6. Defendants 2 to 9 are associated with ISKCON movement of first defendant society. The defendants 1 to 9 are

HIGH COURT OF KARNATAKA BANGALORE

jealous of the meteoric rise in the assets and the fame of plaintiff society. The defendants, with a view to lower the reputation of the President of the plaintiff society, are interfering with the affairs of plaintiff society. The first defendant and the GBC are passing resolutions from time to time and issuing notices interfering with the affairs of the plaintiff society, creating confusion in the mind of devotees and also disturbing the discipline prevailing among the followers of ISKCON movement of plaintiff society. Questioning the illegal acts, the President of plaintiff society filed O.S.No.1483/2001 and the same was withdrawn on the statement made by the advocate for defendants stating that they have not passed any such resolutions and even if there are resolutions they are not acted upon it. Again the defendants and their supporters illegally tried to take possession of the plaint schedule properties from the plaintiff. The defendants are also claiming that they are the owners of the plaint schedule properties and they are denying the title of plaintiff. The plaintiff society, having no other

HIGH COURT OF KARNATAKA BANGALORE

alternative, filed the instant suit against the defendants for the following reliefs:

i. To declare the plaintiff as the absolute owner in possession of plaint schedule properties.

ii. To declare that the executive committee of first defendant has no power or authority to remove the office bearers of plaintiff society.

iii. To declare that the first defendant has no authority to exercise control over the properties of plaintiff society and their possession.

iv. For grant of permanent injunction restraining the defendant Nos. 1 to 9 from interfering with the plaintiff's possession of plaint schedule properties and in its day-to-day functioning and administration.

7. The first defendant filed written statement and the same was adopted by defendants 2 to 9. The defendants contend that the founder acharya, Srila Prabhupada, introduced the concept of establishing ISKCON branches/temples/centres as part of centralised

HIGH COURT OF KARNATAKA BANGALORE

entity with a considerable degree of autonomy. Without GBC's express permission, no branch, temple or centre could be opened. The founder acharya – Srila Prabhupada, during his lifetime, established branches at Bombay, Delhi, Mayapur, Kolkata, Brindavan and Hyderabad. After the mahasamadhi of the founder acharya – Srila Prabhupada on 14.11.1977, the GBC took over the responsibility of guiding the movement and its constituents.

8. Sometime before Srila Prabhupada attained his mahasamadhi, few of his followers in Bangalore commenced group activity of poojas, sankeertans and other religious and charitable practices, on regular basis. After mahasamadhi of founder acharya – Srila Prabhupada, the group in Bangalore became organized into a branch of first defendant and was functioning from the premises at Hanuman Temple, Crescent Road, Bangalore. The person who had taken the lead in organising the Bangalore branch of first defendant, got a society registered, with the name similar to it, under Karnataka

HIGH COURT OF KARNATAKA BANGALORE

Societies Registration Act and the same was defunct and as such the first defendant left the matter at that stage. In the year 1980 the Bangalore Branch of first defendant shifted its activity to a new premises at No.34/A, 9th 'B' Cross, West of Chord Road, Rajajinagar, Bangalore-10. In the year 1984 Madhupandit Das became the President of Bangalore Branch. Subsequently, the Bangalore branch shifted its activity to the premises at No.210, Bellary Road, Bangalore and presently to the Harekrishna Hills, Rajajinagar, i.e. item No. 1 of the plaint 'A' schedule property. Madhupandit Das, the President of Bangalore Branch, was also a member of Bureau and the trustee of first defendant.

10. In 1993 GBC attained corporate status when it was registered under the West Bengal Societies Registration Act, 1960. There are about 50 branches/temples/centres in India. These branches/temples/centres maintain a close contact with the bureau and receive guidance from time to time. It is the duty of these

HIGH COURT OF KARNATAKA BANGALORE

branches to maintain accounts scrupulously, get the same audited and to submit the audited statements to the first defendant - bureau annually. In turn, the first defendant - bureau consolidates the accounts and after integrating the same files the required returns with statutory authorities. Although the bureau has over all control over the branches, they enjoy certain degree of autonomy which, in no case, is a license. The branches can raise funds using the exemption granted to the first defendant under Section 80-G of the Income Tax Act and can enroll the life patrons. The organisational structure of the first defendant is such that the branches form an integral part of first defendant and no branch can claim to be an independent body. All the properties acquired in the name of branches belong to and vest with the first defendant.

11. The first defendant alone is empowered to use the word '*ISKCON*'. The plaintiff society has not obtained any permission in writing from GBC for its registration and to use the

HIGH COURT OF KARNATAKA BANGALORE

word ISKCON and as such it has no authority to spread Krishna movement. The plaintiff society, though registered, was defunct and has not carried on any activity. Madhupandit Das, the President of first defendant branch, continued as member of bureau and as Trustee of first defendant. The said Madhupandit Das who was in control of all the assets, account books of Bangalore branch of first defendant clandestinely manipulated the same and claimed that it belongs to plaintiff society of which he is the self-proclaimed president.

12. Madhupandit Das, as President of first defendant's branch at Bangalore, raised funds from the devotees by using the exemption granted under Section 80-G of the Income Tax Act in favour of the first defendant. The plaint schedule properties are acquired out of the funds raised in the name of first defendant and in the name of first defendant's branch. The construction of the temple and the cultural complex on item No. 1 of the plaint 'A'

HIGH COURT OF KARNATAKA BANGALORE

schedule property was on account of dedicated work by large number of devotees, followers, life patrons and Madhupandi Das the President of first defendant's branch.

13. The plaintiff society, though registered in the year 1978, was defunct. The President of the first defendant's branch by manipulating the accounts and proclaiming himself the President of plaintiff society has filed this false suit with an intention to rob the properties belonging to the first defendant.

14. The Plaintiff society is interfering with the possession of the first defendant – management and control of the plaint schedule properties without any authority and illegally. The defendants also made a counter claim for a decree of permanent injunction against the plaintiff society and its office bearers restraining them from interfering with first defendant's possession and enjoyment of the plaint schedule properties and its day to day management and administration.



15. The plaintiff society filed written statement opposing the counter claim of the defendants. The plaintiff contends that the counter claim of defendants is not maintainable, there is no cause of action and there is no Bangalore branch of first defendant. The defendants are not in possession of the plaint schedule properties and they are not claiming their ownership. The plaint schedule properties are in possession of plaintiff and therefore the defendants are not entitled to the decree of permanent injunction against plaintiff. On these grounds, the plaintiff opposed the counter claim of defendants.

16. Defendant No. 10 is the Registrar of Societies in Karnataka and defendant No. 11 is the Commissioner of Police, Karnataka State. These defendant Nos. 10 and 11 though entered appearance through their advocate, have not filed any written statement. On the basis of pleadings, the Trial Court framed the following issues for its consideration:

HIGH COURT OF KARNATAKA BANGALORE

1. Whether the plaintiff proves that the 1st defendant has no power or authority to exercise control over the possession of the property by the plaintiff?
2. Whether the plaintiff proves that it is the absolute owner in possession of the 1st item of 'A' schedule and 'B' & 'C' schedule properties?

2A. Whether the additional written statement filed by the defendants beyond the amendment carried out to the plaint is liable to be rejected?

2B. Whether the defendants prove that the 1st defendant acquired the schedule properties out of the funds of its branch of Bangalore and the said branch is in possession of them?

2C. Whether the counter-claim is maintainable on the face of OS No.1758/2003?

3. Whether the plaintiff is entitled to declarations sought for?

4. Whether the plaintiff is entitled to the permanent injunction sought for?



5. Whether the plaintiff is entitled to mandatory injunction sought for?

6. Whether the valuation of the suit is proper and the court fee paid thereon is correct and adequate?

6A. Whether the 1st defendant is entitled to permanent injunction sought for in its counter claim?

7. To what order or decree?

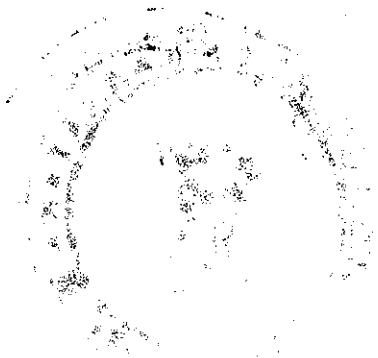
17. Before the Trial Court, the plaintiff got examined three witnesses as PW.1 to PW.3 and got marked Exs.P1 to P253. The defendants got examined four witnesses as DW.1 to DW.4 and got marked Exs.D1 to D.340. The Trial Court, after hearing arguments and on appreciation of oral and documentary evidence, passed the impugned judgment decreeing the suit of plaintiff and dismissing the counter claim of defendants. The Trial Court held that plaintiff is a legally registered society and it is the absolute owner of plaint schedule properties and it is in possession of the same. It is held that

HIGH COURT OF KARNATAKA BANGALORE

first defendant has no authority to exercise control over the plaintiff society. The counter claim of the defendants is not maintainable. Aggrieved by the impugned judgment and decree of the Trial Court the defendants 1 to 4 are before this Court in this appeal.

18. After hearing arguments we reserved the matter for pronouncement of judgment. Later we noticed that issues framed by the Trial Court are not proper and the same require to be recast. Accordingly, we listed the matter for further hearing and after hearing learned Advocates on both the sides, by order dated 29.10.2010 we recast the issues. Learned advocates on both the sides submitted that they have no objection for recasting the issues and that they have no further evidence on the recast issues. Again both the parties filed several applications and we passed appropriate orders disposing those applications. Finally it was brought to our notice that the Supreme Court in Shivakumar Sharma Vs. Santhosh Kumari (2007) 8 SCC 600 held that the High Court should have





formulated the points for its consideration in terms of Order 41 Rule 31 of the Civil Procedure Code and not to frame the issues. In view of the law declared by the Supreme Court the recast issues are treated as points framed by us for consideration in this appeal and they are as under:

1. Whether the plaintiff proves that after its registration in 1978 it continued to function or became defunct as contended by the defendants ?

2. Whether defendants prove that they are having a branch at Bangalore by name ISKCON Bangalore ?

3. Whether Madhu Pandit Das functioned as president of plaintiff society or of ISKCON Bangalore ?

4. Whether plaintiff proves that they are the owners in possession of plaint schedule property?

5. Whether the defendants prove that they are the owners in possession of plaint schedule properties through their branch, ISKCON Bangalore ?

HIGH COURT OF KARNATAKA BANGALORE

6. Whether the defendants prove that plaintiff society, by taking advantage of 1st defendant's branch name ISKCON Bangalore is claiming illegally and fraudulently the schedule property as its property?

7. Whether the plaintiff is entitled to a decree of declaration of title and injunction ?

8. Whether the defendants are entitled to a decree of permanent injunction as claimed in their counter claim?

9. What order or decree?

19. Sri Udaya Holla, learned Senior Counsel for the appellant-defendants 1 to 4 contends that the Trial Court committed an error in not noticing the variance in the pleadings and the evidence of plaintiff. The Trial Court ought to have omitted the evidence which is not supported by pleadings. On the other hand, the Trial Court, by considering the evidence which is not supported by the pleadings, committed an illegality and the same has resulted

HIGH COURT OF KARNATAKA BANGALORE

in failure of justice. The Trial Court committed an error in holding that the plaintiff was sending accounts to the first defendant only for the purpose of dissemination of information and not for any other purpose. The Trial Court committed an illegality in not considering that the first defendant regularly submitted the income tax returns including the audited accounts of its branch at Bangalore and also the use of exemption granted under Section 80-G of the Income Tax Act. The Trial Court committed a mistake in holding that plaintiff is a legally constituted body in existence from 1978. The Trial Court committed an error in not noticing the manipulation of documents by Madhupandit Das, his family members and his close associates.

20. Sri Udaya Holla further contends that the Trial Court committed an error in holding that BDA allotted the plaint schedule property in favour of plaintiff society. The original documents from the BDA are not summoned. The endorsement issued by the BDA specifies that all the original papers are not available in their records.

HIGH COURT OF KARNATAKA BANGALORE

Even the certified copies produced by the plaintiff are all concocted and fabricated documents. The Trial Court, without considering this material on record, committed an error in holding that the item No.1 of plaint 'A' schedule property was allotted in favour of plaintiff society.

21. He contends further that it is admitted in the plaint and also in the evidence that Madhupandit Das was and is incharge of general administration of the plaintiff society, planning and organising donations and final authority in all matters of administration of the temple cum cultural complex. This Madhupandit Das was not examined and as such adverse inference ought to have been drawn by the Trial Court. The Trial Court committed an error in not considering the oral and documentary evidence placed by the defendants in proof of the fact that first defendant had its branch at Bangalore and the plaint schedule properties belong to them. The Trial Court committed an error in

holding that the earlier suits filed by Madhupandit Das were all in his personal capacity. This finding of the Trial Court is contrary to the averments made in the pleadings in the earlier civil suits. The Trial Court committed an error in not considering the admissions made by the witnesses examined on behalf of the plaintiff.

22. Sri Udaya Holla also contends that the Trial Court committed an error in dismissing the counter claim of defendants. The reasoning of the Trial Court is contrary to the evidence on record. The Trial Court committed an illegality in not considering the oral and documentary evidence placed by the defendants. Reliance is placed on several decisions.

23. Per contra Sri S.K.V.Chalapathy, learned Senior counsel for plaintiff supports the impugned judgment and decree of the Trial Court. It is contended that the Trial Court, by considering the entire pleadings, oral and documentary evidence, rightly decreed the suit of the plaintiff. Plaintiff is a registered society and the schedule

HIGH COURT OF KARNATAKA BANGALORE

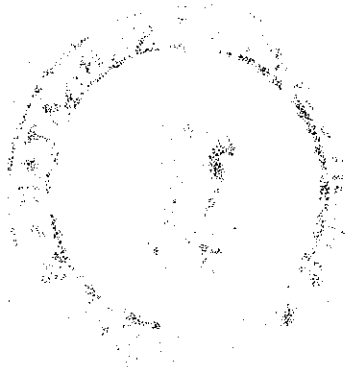
properties belong to it and the defendants have no right to interfere with the same. The defendants have no manner of right, title and interest in the plaint schedule properties. There is no first defendant's branch at Bangalore. Defendants are jealous of the development of the plaintiff society. Learned Senior Counsel has taken us through the oral and documentary evidence. Reliance is placed on several decisions.

24. Heard arguments on both the side and perused the appeal papers and Trial Court record.

On point No. 1

25. Mere existence is different from legal existence. A body may exist but still it may not have a legal status. A body may come into existence yet it may remain defunct. A body may be in existence but what function it was and it is doing is another aspect. Only when a body takes its birth and continues to function in accordance with law then only it acquires a legal status. In the





instant case, it is not in dispute that the plaintiff society came to be registered under the provisions of Karnataka Societies Registration Act, 1960 as per Ex.P2, the Registration Certificate dated 8.7.1978. In the plaint, plaintiff admits that from 1978 to 1984 it was defunct. Plaintiff contends that in 1984 Madhupandit Das became the President of the plaintiff society and he was and is incharge of the general administration of the plaintiff society and his duties include the following:

i) Assignments of pujaris and their duties for the five temples on a day to day basis from among the inmates.

ii) Assignment of main speaker for the morning and evening discourses everyday in the lecture hall.

iii) Fixing the daily scheduling for the daily programs to the main temple hall for the inmates as well as the public.

iv) Spiritual guidance and counseling to inmates and other members of public.

v) Assigning devotees their daily services in various other departments.

vi) Planning and organising donations.

HIGH COURT OF KARNATAKA

vii) Passing expenses vouchers of the plaintiff society.

viii) Sanction of payment requisitions.

ix) Issue cheques to all parties.

x) Approve the needs of full-time volunteer ashram devotees.

xi) Recommending candidates for initiation of diksha.

xii) Organising the diksha ceremonies.

xiii) To organise daily free prasadam for pilgrims.

xiv) To organise prasadam and other items for life members.

xv) To organise festivals in the temple Janmashtami, Narasimha Jayanti, Vaikuntha Ekadashi, Dussera, Diwali, etc.

xvi) To organise regular seminars for dissemination of Vedic knowledge.

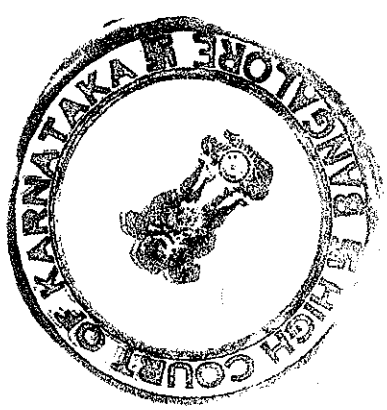
xvii) To organise student programmes on Saturdays.

xviii) Allotment of functions in samskara seva hall.

xix) Plan, schedule and executive building project work in progress.

xx) Make all appointment of staff and fix their terms of service.

xxi) Appointment of auditors and other Advisors.



xxii) Oversee the expansion of the activities of the society in other districts of Karnataka like Mysore.

xxiii) Appoint officers for new branches of the society in Karnataka, to be opened gradually.

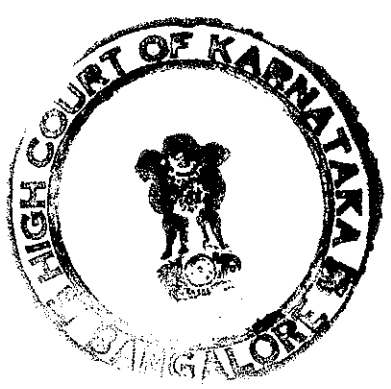
xxiv) Formulating all policies for proper guest relations, life members and donor care.

xxv) Assignment of various facilities of the complex of ruse by life members, donors, visiting devotees from other temples and any other parties.

xxvi) Final deciding authority in all matters of administration of the temple cum cultural complex.

xxvii) Publication of monthly newsletter of the Plaintiff society.

26. As admitted above, Madhupandit Das who became the President of plaintiff society in 1984 continued in the same position till the date of filing of the suit and thereafter also. When the President of the society was solely responsible for the entire activities of plaintiff society, he is the best witness to speak the truth. In the instant case, the plaintiff society has not got examined



its President – Madhupandit Das. It is not the case of the plaintiff that Madhupandit Das was not available nor was there any impediment in getting him examined as a witness for the plaintiff society. The plaintiff society has deliberately and intentionally not examined him as its witness. Non-examination of this important witness who had the full knowledge of all the activities of plaintiff society leads to draw an adverse inference against the plaintiff society. Therefore we are of the view that the Trial Court committed an error in not drawing adverse inference against the plaintiff society.

27. After registration of the plaintiff society in the year 1978 it was mandatory to convey the first general meeting within 18 months from the date of its registration. Further, the general meeting in turn shall elect a Governing Body to look after the day to day administration of the society. In the instant case no documents are produced in proof of holding the first General Body and election

KARNATAKA HIGH COURT BANGALORE

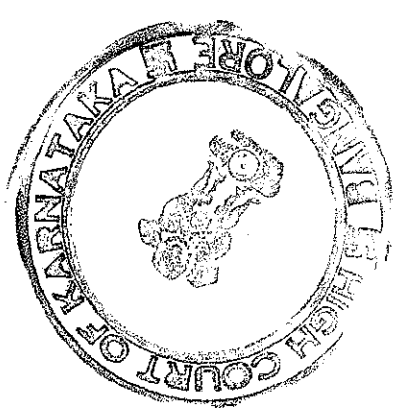
of Governing Body. The failure to convey the first general body within 18 months from the date of registration is clear violation of mandatory requirement under Section 11(2) of the Karnataka Societies Registration Act. The founder of plaintiff society by name Shankar Brij Das in his written statement in O.S.No.1758/2003 clearly states that the plaintiff society, after its registration, did not function and did not carry out any activity and its Governing Body was not constituted. Therefore, we hold that the plaintiff society is not a legally constituted body.

28. There is no evidence on record to show as to when Madhupandit Das, the President of the plaintiff Society, Stoka Krishna Das, the Secretary of the plaintiff society and other office bearers were admitted as members of the plaintiff society. Further, plaintiff has not produced any evidence to show that under which General Body meeting of the plaintiff society the membership of Madhupandit Das and others was approved. No evidence is placed on

HIGH COURT OF KARNATAKA BENGALURU

record to show how many members were there in 1984 and as on the date of filing of the suit. In the absence of this material evidence on record, the Trial Court committed an illegality in holding that the plaintiff society was in legal existence from 1978 till the date of filing of suit. The reasoning of the Trial Court is not supported by any evidence on record and on the other hand the same is contrary to the evidence on record.

29. Ex.P. 83 is the certified copy of the register from the office of Registrar of Societies specifying that the plaintiff society filed the list of office bearers elected in its General Body for the year 1987-88. Exs.P.89 to Ex.P.100 are the copies of reports filed by the plaintiff society with the Registrar of Societies on 21/8/2001 for the years 1988-2001 specifying the list of elected members of Governing Body and the accounts. On the face of it, as admitted by the plaintiff, from 1978 to 1988, no reports are filed with the Registrar of Societies. It further specifies that for the entire period from 1988 to



2001 the reports are filed on 21/8/2001. Under Section 13 of the Karnataka Societies Registration Act, if there is delay in filing the report then sufficient cause is to be shown and if the Registrar is satisfied with the cause shown, he may condone the delay. Further, the Registrar shall have to pass an order accepting the reports filed by the society. In the instant case, the plaintiff society has not produced any order passed by the Registrar of societies condoning the delay caused in filing the reports and accepting the reports filed by the plaintiff society. Further, a perusal of these reports indicate that they are tailor made to suit the convenience of the plaintiff society. It is noticed from these reports that some portions of the resolutions are typed, some portions are handwritten and some portions are computer sheets. Some portions are antidated and some other resolutions are passed from the place when the same was not in the possession of the plaintiff. There was no impediment for the plaintiff society to summon a witness and the relevant documents from the office of the Registrar of Societies. Plaintiff society

HIGH COURT OF KARNATAKA BANGALORE

deliberately has not summoned any witness nor documents from the office of the Registrar of Societies. Except the oral interested testimony of PW.1, there is no other evidence on record. In the facts and circumstances of the case, the above referred documents do not repose any confidence in the mind of the court with regard to the functioning of the plaintiff society and its legal existence.

30. From 1978 till March 2002 the plaintiff society has not filed its return of income with the Income Tax Department. For the first time the plaintiff society filed its first return of income in March 2002 for the assessment year 2000-01 showing opening corpus fund of about ₹39.59 crores in its balance sheet. The returns of income filed by plaintiff society are all subsequent to filing of the present suit and therefore they are of no help to the plaintiff to contend that it is functioning.

31. The plaintiff society has relied upon Exs.P4 and P5 the copies of plaint in O.S.No.1936/1979 to contend that it was in

existence from the year 1979. A perusal of Ex.P4 specifies that only one page of the plaint is certified and the remaining pages of the plaint are not produced. Even this one page certified copy does not bear the seal of the court showing when the copy application was filed, who applied for the copy and when it was delivered. Further, Ex.P5 is the office copy of the plaint in O.S. No. 1936/1979. Admittedly this plaint was signed and filed before the Court by the then President Shankar Brij Das. But the signature of this Shankar Brij Das, is not found on the office copy of the plaint. Further, Shankar Brij Das, in his written statement in O.S. No. 1758/2003, has specifically stated that the plaintiff society, after its registration in the year 1978, did not function. In the circumstances, no reliance can be placed on Exs.P4 and Ex.P5 to hold that plaintiff society had the legal existence.

32. Exs.P.6 to Ex.P.50 are the copies of the documents relating to the telephone connections in the name of plaintiff

HIGH COURT OF KARNATAKA
BENGALURU

society. According to the plaintiff these documents are related to applying for telephone connection, shifting of telephones and transfer of telephones. A perusal of these documents specify that there are insertions and the round rubber seal of the plaintiff society was affixed at a later stage. Surprisingly, the plaintiff society has not produced a single bill for having paid telephone charges for the period from 1980 to 2000. Assuming that some telephone connections were in the name of plaintiff society there is no evidence to show that they are used by the plaintiff society in its day to day functioning. In the absence of any such telephone bills, it is not proper to hold that the plaintiff society was functioning. On the other hand, the audited accounts submitted by the ISKCON, Bangalore to the first defendant at Mumbai specifies the payment of telephone bills. This evidence manifestly makes it clear that ISKCON, Bangalore was using telephone connections which were in the name of plaintiff society and not the plaintiff society. Hence



these documents do not support the case of plaintiff that it was functioning.

33. The plaintiff society has relied upon Exs.P.114 to Ex.P.125, the correspondence and registration of plaintiff society under the provisions of Foreign Contribution Regulation Act. Again, a perusal of these documents specifies that no transaction had taken place despite there being a registration under the Foreign Contribution Regulation Act. So also the plaintiff society relied on Ex.P.112 the certificate dated 7.1.1988 issued by the Income Tax department under Section 12A of the Income Tax Act. Though the plaintiff society is having this certificate under Section 12A of the IT Act the same was not used by the plaintiff society. No evidence is placed on record to show that from 1988 till the date of filing of the suit in 2001, plaintiff society used the certificate issued under Section 12A of the IT Act. On the other hand, Madhupandit Das, the President of the plaintiff society, in his correspondence with the

HIGH COURT OF KARNATAKA BANGALORE

first defendant Society as per Ex.D. 213 and Ex.D. 214, specifically requested the first defendant society to send copy of certificate under Section 12A in its name for the use at Bangalore. Therefore, these documents relied on by the plaintiff society will be of any use to hold that plaintiff society had legal existence and that it was functioning.

34. The plaintiff society has relied upon Exs.P. 125 to Ex.P. 138 relating to Central Sales Tax and State Sales Tax. Again, this documentary evidence will only specify that the plaintiff society was registered with Central Sales Tax and State Sales Tax. It also specifies that nil returns are filed by the plaintiff society. It is also seen from these documents that there are insertions and affixing of the round rubber stamp seal of plaintiff society in an unusual manner. Therefore, this documentary evidence do not help the plaintiff society to hold that it had legal existence. PW.1 has specifically stated in his evidence that plaintiff society has opened

bank accounts with Vijaya Bank, Bank of Baroda, Indian Bank, Corporation Bank, Canara Bank and State Bank of Mysore. But the plaintiff society has not produced pass books or balance sheets showing the transactions made in these accounts and as to who operated these accounts. Non-production of these important documents is an important factor to hold that plaintiff society had no legal existence.

35. The documents referred to above do not indicate that plaintiff society was in legal existence. Thus they do not support the case of plaintiff that it was engaged in spreading ISKCON movement at Bangalore. These documents do not indicate that plaintiff society was managing and administering the Harekrishna Temple and the cultural complex at Bangalore. Therefore, the plaintiff society miserably failed to prove that it had legal existence as an independent autonomous body engaged in spreading the ISKCON

HIGH COURT OF KARNATAKA BANGALORE

movement at Bangalore. For the reasons stated above point No.1 is answered in negative and against the plaintiff.

On Point No. 2

36. The defendants contend that sometime before 1977 the followers of founder Acharya – Srila Prabhupada commenced a group activity of poojas, sankeertans, religious and charitable practices at Bangalore and other parts of Karnataka. The group activity at Bangalore slowly picked up and organised into branch of first defendant and their office was situate at Sri Hanuman Temple, Crescent Road, Bangalore. In the month of August 1980 the branch of first defendant was shifted to premises to No.34/A, 9B Cross, West of Chord Road, 2nd Stage, Rajajinagar, Bangalore. The defendant contends that Shankar Brij Das was the President of ISKCON, Bangalore upto 1980, Tathava Darshan Das upto 1981 and Mahasringe Das upto 1982-83. The correspondence made by these Presidents with the first defendant informing the activities at Bangalore are found at Ex.D.167, Ex.D.171, and Ex.D.256. The

accounts of Bangalore branch were sent to first defendant as per Ex.D.9.

37. The defendants contend that Madhupandit Das was working at Trivandrum in Kerala State and he was shifted from there to Bangalore in the year 1984. Madhupandit Das became the President of the Bangalore Branch of first defendant. The Bangalore Branch shifted its activity to another premises at No.201, Bellary Road, Bangalore and presently it is functioning from item No.1 of plaint 'A' schedule i.e. Harekrishna Hills. This Madhupandit Das, the President of Bangalore Branch became the member of Bureau and Trustee of first defendant. From time to time Madhupandit Das was informing all activities to the first defendant as per Exs.D.167 to D.285 the correspondence for the period from 1977 to 2001. Regularly Madhupandit Das was sending the audited accounts of Bangalore Branch to the first defendant and they are found at Exs.D.9 to D.37 for the period from 1982 to 2001. The first

HIGH COURT OF KARNATAKA BANGALORE

defendant in turn filed income tax returns of all the branches including the Bangalore Branch as per Exs.D.38 to D.55. The audited accounts submitted by the Bangalore Branch from 1982 to 2000 are included in the income tax returns filed by the first defendant. On the other hand, the Bangalore Branch has not filed independent and separate returns of income to income tax department for these years from 1982 to 2000. Further, the Bangalore Branch raised funds by using the exemption granted to the first defendant under Section 80G of the Income Tax Act and also enrolled life patrons. Exs.D106 to D142 are the receipts issued by the Bangalore Branch by using the exemption granted under Section 80G of the Income Tax Act in favour of first defendant. These amounts collected by the Bangalore Branch are utilised for acquiring the plaint schedule properties and for day to day activities at Bangalore. Admittedly, the plaintiff society has not filed income tax returns up to the year 2002 and it did not had separate and independent exemption granted under Section 80G of the Income

Tax Act. This admitted evidence on record clearly establishes the fact that the first defendant had their branch at Bangalore.

38. The plaintiff in the plaint contends that six voluntary inmates started their activities at Bangalore in the year 1984 and one of them was Madhupandit Das. PW.1, at Para No.10 of his examination-in-chief states that bunch of devotees who came from Bombay in or around 1977 for spreading ISKCON movement in Bangalore were loosely referred to as Bombay group of the Bangalore Branch. Ex.P205 is the copy of the resolution dated 9.2.1990 passed by the plaintiff society stating that the first defendant handed over the affairs of Bangalore branch to the plaintiff society and the same reads as:

> "We record our gratitude to the Bombay society for handing over the state of affairs of Bangalore branch of Bombay to our society conveyed through and again by his holiness Jai Pataka Swamy formed on behalf of the bureau. I like to acknowledge with gratitude that the donors

HIGH COURT OF KARNATAKA BANGALORE

and the devotees at Bangalore have aided the development of the Centre into autonomous centre. Thus the procurement of its own land last year has opened a new chapter for ISKCON movement in Karnataka"

39. Madhupandit Das, in judicial proceedings in O.S. No. 4165/1984, complaint No. 1599/1993, O.S. No. 2180/1999, O.S. No. 4467/2000 and O.S. No. 1483/2001 categorically admitted the existence of first defendant's branch at Bangalore and he being its President from the year 1984. The entire correspondence from 1984 to 2001 between defendant No. 1 and its branch at Bangalore establishes the existence of Bangalore branch and that the same was under the control of defendant No.1 .

40. The admission in the pleadings, oral evidence of PW.1 and PW.3 and the documentary evidence clearly establishes the existence of defendant's branch at Bangalore. Hence, point No.2 is answered in affirmative.



On Point No. 3

41. Plaintiff society contends that Madhupandit Das worked as its President from 1984 onwards. On the other hand, the first defendant contends that Madhupandit Das worked as President of its Branch at Bangalore. As against this rival contention, it is seen from the record that as per Ex.D.41, a letter addressed by Madhupandit Das from Trivandrum to Jai Pataka Swamy at Calcutta, that he admitted that he was the President of Trivandrum branch of ISKCON. So also in Exs.D.247 and D.248, the letters dated 17.6.1984 and 18.6.1984 respectively, Madhupandit Das admits that he was the President of the ISKCON branch at Trivandrum. Ex.D.295 is the copy of deposition of Madhupandit Das in O.S. No. 4165/1984 wherein he admits that he is the President of ISKCON, Bangalore. Ex.D296 is the statement of objections signed and filed by Madhupandit Das in a consumer complaint No.1599/1993 before the District Consumer Disputes Redressal Forum at Bangalore. In this statement of objections Madhupandit Das has admitted that ISKCON

HIGH COURT OF KARNATAKA BANGALORE

is the international organisation having its head office at Bombay in India, ISKCON, Bangalore is only its branch/bureau. It is further admitted that ISKCON, Bangalore is having its administrative office at Bombay and it functions under the direct control of the Bombay office. The ISKCON, Bangalore has been receiving books only from the ISKCON, Bombay.

42. Ex.D. 152 is the copy of plaint in O.S.No.2180/1999 on the file of the learned City Civil Judge at Bangalore. It was filed by Madhupandit Das, Chanchalapati Das and three others against ISKCON Governing Body in West Bengal, ISKCON Bureau, Mumbai and two others. In this plaint it is admitted that Madhupandit Das is the President and plaintiffs 3 to 5 are the full time practising devotees of Bangalore Branch, which is administratively under the control of fourth defendant ISKCON Bureau at Mumbai. It is also admitted that the Bangalore branch prepares annual balance sheet and submits the same after audit to the ISKCON Bureau at Bombay

HIGH COURT OF KARNATAKA BANGALORE

in turn, the ISKCON Bombay submits the returns to the income tax authorities including the audited balance sheets sent by the Bangalore branch. The prayer in O.S. No. 2180/1999 is for declaration that the defendants have no manner of control or authority to interfere with the affairs of the Bangalore Branch of the International Society for Krishna Consciousness and for permanent injunction restraining the defendants in the suit from initiating any action against the Madhupandit Das and others insofar as their official position in Bangalore Branch is concerned.

43. Ex.D. 156 is the copy of plaint in O.S.No.4467/2000 that was filed by Madhupandit Das against one Vinay Kalro and three others on the file of the learned City Civil Judge, Bangalore to declare the action of the defendants in constituting second ISKCON centre at Bangalore null and void and for a decree of permanent injunction. In this plaint Madhupandit Das described himself as the President of ISKCON Bangalore branch. Further, it is stated that the

HIGH COURT OF KARNATAKA BANGALORE

Bangalore branch is administratively under the control of the ISKCON, Bombay. Madhupandit Das admits that he is also one of the members of Bureau of ISKCON, Bombay and that he was designated as the President of Bangalore Branch in 1984. It is also admitted that the Bangalore branch prepares annual balance sheet and submits the same after the audit to the Bureau at Mumbai and the Society at Mumbai on the whole is assessed for tax at Mumbai wherein the Bangalore branch reflected as the branch of the Mumbai society in the returns that are filed before Income Tax authorities from time to time. It is admitted that ISKCON Bangalore headed by Madhupandit Das is working in Bangalore, formation of second ISKCON at Bangalore is in violation of rules of ISKCON Bombay and the second ISKCON at Bangalore is commenced without sanction from the ISKCON, Bombay.

44. Ex.D.154 is the copy of plaint in O.S.No.1483/2001 filed by the Madhupandit Das and two others against Gopala

Krishna Goswamy and 19 others. In this plaint it is admitted that Madhupandit Das is the President of Bangalore Branch of ISKCON and he is also practicing member of ISKCON, Mumbai and also Governing Council of ISKCON Bureau, Mumbai. It is admitted that the Bangalore Branch of ISKCON came into existence in 1981 and Madhupandit Das was designated as its President in the year 1984. This suit is filed against the ISKCON Bureau, Mumbai and others to declare the amended rules of 1978 of ISKCON Bombay as bad in law and the certificate issued by them to open the second branch of ISKCON Bangalore as null and void and also to declare that defendant No.1 has no authority to remove the President and others at Bangalore branch.

45. Right from 1984 Madhupandit Das had correspondence with the first defendant at Bombay as per Exs.D.74, D.182, D.257, D.265 and D.266. In this correspondence Madhupandit Das admitted that he is the President of first defendant's branch at Bangalore.

COURT OF KARNATAKA HIGH COURT BANGALORE

Further, Exs.D16, D.214, D.216 D.260 to 262, D.270 to 272, D.278, D.282, D.283 and D.286 to 288 are the correspondence made by Madhupandit Das with the defendant No. 1 at Bombay admitting that he is the Member and Secretary of Bureau of the defendant No.1. Exs.D26, D.28, D.44 and D.46 are the audited accounts submitted by Madhupandit Das pertaining to the income and expenditure at Bangalore Branch to the first defendant. These documents signed and sent by Madhupandit Das to the first defendant at Bombay clearly establish that he was functioning as President of Bangalore Branch of first defendant. Madhupandit Das has not stepped into the witness box and has not denied the contents of these documents.

46. The plaintiff society has produced Ex.P211, a resolution dated 5.11.2001 stating that Madhupandit Das wrongly made a statement in the several proceedings before the Civil Courts due to his emotional attachment arising out of early association with

ISKCON, Mumbai. The statements made by the Madhupandit Das are in his individual capacity and not binding on the plaintiff society. This resolution by the Managing Committee of the plaintiff society is a unilateral document cooked up for the purpose of this case. This resolution will not take away the admissions made by Madhupandit Das in several judicial proceedings before the courts and his correspondence with the first defendant from 1984 to 2001. No credence can be given to Ex.P.211, the resolution of plaintiff society. Though the plaintiff society mentioned the name of Madhupandit Das in its list of witnesses filed before the Trial Court, he was not examined. Thus the plaintiff withheld the best evidence with an intention that if he is examined, his evidence would go against the plaintiff. Non-examination of this important witness Madhupandit Das is fatal to the case of the plaintiff. The Trial Court, without considering these admissions on record, committed an illegality in holding that no adverse inference can be drawn against the plaintiff. Therefore, point no.3 is held against the

HIGH COURT OF KARNATAKA BANGALORE

plaintiff. Madhupandit Das worked as President of first defendant's branch, ISKCON, Bangalore and not as President of Plaintiff society.

On point Nos. 4 and 5

47. The plaintiff society is seeking declaration of title in respect of plaint schedule properties and they are as under:

Plaint A properties :

I. Immovable property bearing Sy.Nos.174 and 175 Ketamaranahalli, now called as II stage, Rajajinagar Extension, Bangalore, measuring 6 acres 8 guntas.

II. Immovable property bearing premises No. 3, I Cross, III Stage, Gokulam, Mysore.

Plaint B Properties:

Gold and silver jewellery, utensils, electrical installations etc.

Plaint C Properties:

Bank accounts in the name of plaintiff in Bangalore and Mysore.

48. It is necessary to deal with each category of plaint schedule properties. Item No.1 of plaint A schedule property is situate at Bangalore. In this property a temple and a cultural complex is constructed. Plaintiff society contends that it applied for allotment of land to the Bangalore Development Authority (for short `the BDA') and the same was allotted to it, possession was delivered to it and it (plaintiff society) constructed the temple and cultural complex. In support of this contention, the plaintiff society has produced Exs.P.51, P.53, P.57, P.58 and P.68 – the certified copies of the application, reminder letters etc., addressed to the Chairman, Commissioner and other authorities of BDA. These letters are on the letter pad under the name and style `International Society for Krishna Consciousness (ISKCON)'. These letters are signed by Madhupandit Das as President of ISKCON. On these letters there is a round rubber stamp seal specifying the registration number of the plaintiff society bearing No.49/78-79. These letters are during the period from 05.02.1987 to 21.10.1988. Based on these documents the

HIGH COURT OF KARNATAKA BANGALORE

plaintiff society contends that the plaintiff applied for allotment of land to the BDA and the same was allotted to it. On the other hand, the defendants have produced Exs.D.82, D.83, D.86 and D.87 – the letters addressed to first defendant Mumbai. These letters are also on the letter pad under the name and style 'International Society For Krishna Consciousness (ISKCON)'. These letters are signed by Madhupandit Das and he has despatched them to first defendant. These letters are between 1987 and 1988. These letters do not bear the round rubber stamp seal containing the registration number of plaintiff society. Madhupandit Das has not denied Exs.D.82, D.83, D.86 and D.87. Further, these letters specify the allotment of land by the BDA. A comparison of these two sets of documents, that is, Ex.P. series (Ex.P.51 to Ex.P.68) and documents at Ex.D. series (Ex.D.82 to Ex.D.87) makes it clear that both series are on the same type of letter pad, during the same years 1987 and 1988, both are signed by Madhupandit Das and both are in relation to allotment of land by BDA. When a round rubber stamp seal is found on Ex.P. series then

there is no reason why the same does not find a place on Ex.D. series. There is no explanation from the plaintiff in this regard. Further, the way in which the round rubber stamp seal is affixed on Ex.P. series appears to be a subsequent insertion. Though Ex.P. series at Ex.P.51 to P.68 are the certified copies alleged to have been issued by the BDA, the original documents are not summoned. Even otherwise, the registration number of a society, in the normal course, will be printed on the letter pad itself. But in the instant case a round rubber stamp seal is affixed on these documents and the same creates a doubt. Under these circumstances, on the basis of Exs.P.51 to P.68 it cannot be said that the plaintiff society had applied for allotment of land and that the same was allotted to it. On the other hand Exs.D.82 to D.87 are the letters from Madhupandit Das at Bangalore as the President of Iskcon, Bangalore in the very same letter pad without a round rubber stamp seal appear to be genuine and true documents. From this evidence on record it is clear that Madhupandit Das, in his capacity as the President of branch of

HIGH COURT OF KARNATAKA BANGALORE

first defendant at Bangalore, applied for allotment of site and obtained the same.

49. Ex.P.170 is the sale deed dated 03.08.1988 executed by the BDA in favour of ISKCON at Bangalore. In this registered sale deed there is no mention with regard to the registration number of the plaintiff society. Again Madhupandit Das representing ISKCON Bangalore affixed his signature on this sale deed Ex.P.170. If really the BDA has allotted and conveyed the land to the plaintiff society, then there was no impediment to incorporate the registration number of the plaintiff society in the sale deed. The absence of the registration number of the plaintiff society in the sale deed Ex.P.170 clearly establishes the fact that the BDA allotted the land in question in favour of ISKCON, Bangalore and not in favour of the plaintiff society.

50. Plaintiff society contends that it has taken possession of land in survey Nos. 174 and 175 from BDA under the possession

certificate dated 16.08.1988 – Ex.P.72 and the draft possession certificate dated 18.08.1988 as per Ex.P.203. Ex.P.72 dated 16.08.1988 is the original possession certificate. If the original possession certificate was given on 16.08.1988 then the draft possession certificate should have been prior to that date. But, surprisingly, the draft possession certificate as per Ex.P.203 is dated 18.08.1988. This draft possession certificate Ex.P.203 bears round rubber stamp seal containing the registration number of the plaintiff society. But this round rubber stamp seal is not found on the original possession certificate Ex.P.72. Further, the BDA Act and the Rules do not provide for issuing a draft possession certificate. Therefore the draft possession certificate Ex.P.203 containing the round rubber stamp seal of the plaintiff society is a concocted document and the same cannot be believed.

51. Ex.P.72, the original possession certificate, specifies that the possession of survey Nos. 174 and 175 was handed over to

HIGH COURT OF KARNATAKA BANGALORE

Madhupandit Das – the President of ISKCON. This possession certificate do not specify that the possession was delivered to the plaintiff society. Further, this possession certificate does not specify that Madhupandit Das had taken possession for and on behalf of the plaintiff society. Further, Madhupandit Das has not stepped into the witness box to clarify that he had taken possession of the land from the BDA on behalf of the plaintiff society. Therefore the contention of the plaintiff that they have taken possession of the land from BDA is unacceptable.

52. Ex.P.55 and Ex.P.56 specify that the President of International Society for Krishna Consciousness paid the money to the BDA. Ex.P.63 specifies that Madhupandit Das – the President of ISKCON paid the amount to the BDA. Again these three documents do not specify that the plaintiff society paid the money. According to the plaintiff, Madhupandit Das is their President. On the other hand first defendant contends that Madhupandit Das is the

President of their branch at Bangalore. In order to clarify this situation Madhupandit Das has not stepped into the witness box. The non-examination of Madhupandit Das by the plaintiff is fatal to their case. Further, it is seen from the record that the payments made to the BDA under Exs.P.55, P.56 and P.63 are also reflected in the audit accounts submitted by Madhupandit Das to the first defendant at Mumbai which in turn, submitted the annual income tax returns including the payments covered under Exs.P.55, P.56 and P.63. Thus it is clear that these payments were made by Madhupandit Das in his capacity as the President of branch of first defendant at Bangalore but not for and on behalf of plaintiff - society.

53. Plaintiff has produced Ex.P.66 - the general ledger for the years 1987 to 1989 specifying the payments made by the plaintiff society towards purchase of the said land. Firstly, this ledger is an unilateral document prepared by the plaintiff society and as such the

HIGH COURT OF KARNATAKA BANGALORE

same cannot be believed. Secondly, a perusal of this ledger specifies that between 17.06.1988 and 10.08.1988 the plaintiff society spent amounts towards sale consideration, stamp duty and registration charges in cash. When the plaintiff is a registered society, the payment by cash, that too, huge sums of money, is unbelievable. P.W.1, the Secretary of the plaintiff society has deposed in his evidence that the plaintiff society has opened accounts in Vysya Bank, Bank of Baroda, Vijaya Bank, Indian Bank, Canara Bank, Corporation Bank and State Bank of Mysore at various places in Bangalore. But the plaintiff society has not produced either the bank pass books or the statements of accounts with these banks. Further, there is no evidence on record to show as to who opened the bank accounts and who operated the same. In the absence of any such documents the entries in the general ledger as per Ex.P.164 cannot be relied upon as genuine.

54. Plaintiff has produced the certified copies issued by the BDA from its record relating to the allotment of land in survey Nos. 174 and 175. First defendant has also produced copies of certain documents issued by the BDA. No Officer of BDA is examined as witness and no originals of these documents are summoned from the BDA. There was no impediment for summoning a witness and also the originals of the documents from the BDA. The certified copies produced before the Court specify that certain pages are missing from the BDA record, certain insertions are made in the BDA record and there is tampering of certain documents. This material on record do not repose confidence in the mind of the Court that the plaintiff society applied for allotment of land and the same was allotted to it and it took possession of the same.

55. Ex.P.79 is copy of the letter written by Indu Bai C. Patel to the then Chief Minister of Karnataka Ramakrishna Hegde. This letter specifies that a letter dated 05.03.1987 from Madhupandit Das

HIGH COURT OF KARNATAKA

to the Chief Minister was enclosed for allotment of 2 acres of land at Jayanagar in Bangalore by the BDA for a cultural complex. This letter further specifies that Madhupandit Das would meet the Chief Minister. Ex.P.80 to Ex.P.88 are the correspondence between Madhupandit Das and M.V. Kapadia – the Chief Accountant, ISKCON, Mumbai, specifying that for securing allotment of land from the BDA at concessional rate certain documents such as Memorandum and Rules of Society, Certificate under Section 2(15) of the Income Tax Act, Section 30(g) certificate, Section 80(g) certificate etc are required to be produced. This correspondence between Madhupandit Das and the Chief Accountant, ISKCON, Mumbai, clearly establishes that the allotment of land from the BDA was secured by producing the documents relating to first defendant society. Nowhere in this correspondence there is reference to the plaintiff society. On the other hand, this correspondence further specifies that Madhupandit Das, as the President of ISKCON,

Bangalore, applied for allotment, paid money, secured concession and took possession of land from the BDA.

56. Madhupandit Das and four others filed civil suit in O.S. No. 2180/1999 against the ISKCON Governing Body Society at West Bengal, ISKCON Bureau, Mumbai and two others for decree of declaration that first defendant therein has no manner of control and authority over the first and second plaintiffs at Bangalore Branch of ISKCON and for permanent injunction restraining the defendants therein from initiating any action against the plaintiffs in discharging their official functions of Bangalore branch. In this plaint the first plaintiff Madhupandit Das is described as the President of Bangalore branch of ISKCON society and the second plaintiff as its Vice-President. In paragraph 8 of this plaint it is stated as under:

> 8. At the time of commencement of the activities by the Bangalore branch in the year 1981 as narrated above the corpus of the branch of the

HIGH COURT OF KARNATAKA BANGALORE

Society was about `20,00,000/- and the monthly budget was `20,000/- which was raised by way of local donations for its charitable activities. It is significant to note that the present corpus of the Bangalore branch of Society within the 15 years of its inception has risen to `34,27,23,521.43 as per the audited balance sheet as on 31.03.1998 and by the untiring effects of the 1st and 2nd plaintiffs among others a temple and cultural complex spanning over a vast landscape of about 7 acres acquired from Bangalore Development Authority in 1987 has been put up. The Bangalore temple and cultural complex is a monumental place of pride of Bangaloreans in particular and ISKCON in general and attracts a daily average of about 5000 pilgrims. ... ... "

57. Further, Madhupandit Das, as President of ISKCON, Bangalore branch, filed a civil suit in O.S. No. 4467/2000 on the file of City Civil Judge at Bangalore against one Sri. Vinaya Kalro and three others for a decree of declaration that the second ISKCON centre at Bangalore city floated by the defendants therein is null,

void and illegal and for other reliefs. In this plaint, in paragraphs 7 and 8 it is stated as under:

> "7. In the meanwhile the ISKCON society formed in Bombay which was managed by the bureau referred to above sought to open several branches throughout the country. In the Bangalore city the plaintiff herein along with 5 other voluntary inmates started the activities of the Society in a humble manner in the year 981 in certain rented houses at Rajajinagar, Bangalore. The plaintiff was designated as the President of the Bangalore branch in 1984.
>
> 8. At the time of commencement of the activities by the Bangalore branch in the year 1981 as narrated above the corpus of the branch of the Society was about `20,00,000/- and the monthly budget was `20,000/- which was raised by way of local donations for its charitable activities. It is significant to note that the present corpus of the Bangalore branch of the Society within the 15 years of its inception has risen to `34,27,23,521.43 as per

HIGH COURT OF KARNATAKA BANGALORE

the audited balance sheet as on 31.03.1998 and by the untiring efforts of the office bearers of the Bangalore branch a temple and cultural complex is a monumental place of pride of Bangaloreans in particular and ISKCON in general and attracts a daily average of about 7000 pilgrims. The plaintiff personally designed the said complex and monitored the construction, installation of the deities and has been in charge of the day to day administration of the branch almost since its inception at Bangalore. The branch also comprises of about 60 full time voluntary devotees. The pilgrims and the members visiting the temple complex are also provided with prasadam and the cost of running the kitchen attached to the branch alone calls for a monthly investment of about Rs.8 lakhs. The branch has about 25000 life patrons in Bangalore city alone. The life patrons and other members represent the various cross sections of the society in general and residents of all localities of the metropolitan city of Bangalore. The plaintiff has been serving the branch as its president for the past over 15 years. He has been

KARNATAKA HIGH COURT OF BANGALORE

incharge of the general administration of the branch and his duties along with other office bearers of the Bangalore branch include the following:"

---

58. Again Madhupandit Das, as President of Bangalore branch of ISKCON society, filed a civil suit in O.S. No. 1483/2001 on the file of City Civil Judge at Bangalore against one Sri. Gopala Krishna Goswamy, ISKCON Mumbai, ISKCON Bureau Mumbai, ISKCON Governing Body West Bengal and others to declare the Rules made by ISKCON Mumbai in the years 1978 and 1993 as void, inoperative, unconstitutional, ineffective and bad in law and also for other reliefs. In this plaint in paragraphs 3 and 4 it is stated that Madhupandit Das was designated as President of Bangalore branch in the year 1984, as President of Bangalore branch he submitted annual accounts to the ISKCON, Mumbai and in turn ISKCON Mumbai submitted returns to the Income Tax Department wherein the audited accounts of Bangalore branch are also reflected. Further

HIGH COURT OF KARNATAKA

it is admitted that Bangalore branch acquired land from BDA and had constructed a temple and cultural complex.

59. The judicial proceedings referred to above are not disputed by the plaintiff. The contention of the plaintiff that these judicial proceedings are initiated by Madhupandit Das in his personal capacity and therefore the same are not binding on the plaintiff society is unacceptable. Madhupandit Das has not stepped into the witness box to clarify under what circumstances he made the above statements in the civil suits filed by him. Further, it is seen that in the civil suits referred to above and other civil suits filed earlier, there is no reference with regard to the plaintiff society. From this material on record it is manifest that item No. 1 of plaint A schedule property belongs to ISKCON Bangalore, the branch of first defendant.

60. Insofar as item No. 2 of plaint A schedule property situate at Mysore is concerned, there is no pleading as to when the plaintiff

HIGH COURT OF KARNATAKA BANGALORE

acquired the same, from whom and in what manner. Further, P.W.1 to P.W.3 in their evidence have not whispered a word in relation to acquiring of immovable property at Mysore. No documents are produced before the Court to prove and establish that plaintiff is the owner of immovable property at Mysore. In the absence of pleadings and evidence the plaintiff society has miserably failed to prove it is the owner of item No. 2 of plaint A schedule property.

61. Plaint B schedule properties are gold and silver jewelleries, utensils, vessels and electrical installations and other movables. Again in the plaint the plaintiff society has not pleaded as to when and how these movables came to be acquired by it. Even P.W.1 to P.W.3 in their depositions have not whispered a single word with regard to acquisition of plaint B schedule properties by the plaintiff society. So also in respect of plaint C schedule properties relating to bank accounts at Bangalore and Mysore no details are furnished. Neither in the plaint nor in the evidence the details of

HIGH COURT OF KARNATAKA BANGALORE

bank account numbers, when they are opened, what are the transactions, who operate the accounts and in what capacity, and what is the outstanding balance, are not placed before the Court. In the absence of any such evidence the plaintiff society has miserably failed to prove and establish that they are the owners of bank accounts.

62. For the reasons stated above, point No. 4 is answered in negative and point No. 5 in affirmative.

On point No. 6

63. India is a land of religions and temples. Temples are religious centers and are places of public worship. Giving Gifts (dhana) to religions and temples have always been construed in India as the most sacred duty of a man. Almost every Indian makes some kind of gift, small or great, during his life time in the hope of securing a better state of existence in the life to come. The most sacred gifts are construction of temples, offerings to God and

HIGH COURT OF KARNATAKA BANGALORE

creating endowments for due performance of their daily rites and ceremonies. In this way landed properties, buildings, cattle, gold, jewels, cash, grain etc., were either endowed or gifted to temples.

64. It is this devotion to religion and God made the people to gift to ISKCON movement in Karnataka. Admittedly in 1978 when ISKCON movement was started in Bangalore it had only few hundred rupees and now it has grown to an extent of `39.00 crores in the year 2001 when the present suit was filed. A beautiful temple and cultural complex is constructed on item No. 1 of the plaint A schedule property attracting thousands of pilgrims every day. By the year 1980 the ISCKON Bangalore enrolled 350 life members and by 2001 it was increased to 35,000. Admittedly behind this tremendous growth and development there is hard work of Madhupandit Das – the President of ISKCON Bangalore and number of other full time devotees. The plaint schedule properties are acquired from out of the contributions by the life members, donors, devotees and general

HIGH COURT OF KARNATAKA BANGALORE

public in and outside Karnataka. Therefore, the schedule properties belong to the devotees.

65. As already held Madhupandit Das was the President of ISKCON, Bangalore from the year 1984. Correspondence from the year 1977 to 2001 as per Ex.D. 167 to Ex.D. 285 establishes that the ISKCON, Bangalore is a branch of defendant No. 1 and Madhupandit Das was its President from 1984. The ISKCON, Bangalore regularly sent the audited reports to defendant No. 1 from the year 1980 to 2000 as per Ex.D.9 to Ex.D.37. In turn defendant No. 1 filed income tax returns as per Ex.D.38 to Ex.D.55 by including the income and expenditure of ISKCON, Bangalore branch. Further, ISKCON, Bangalore Branch, utilised the benefit of Tax exemption granted under Section 80-G of the Income Tax Act in the name of defendant No. 1 in the matter of raising funds. It is seen from the record that Madhupandit Das in judicial proceedings in complaint No. 1599/1993 before the District Consumer Forum, Bangalore, in O.S.

HIGH COURT OF KARNATAKA BANGALORE

No. 4165/1984 and O.S. No. 218/1999 on the file of City Civil Judge, Bangalore, clearly admitted that he is the President of ISKCON, Bangalore branch and the same is under the control of defendant No.1 – ISKCON, Mumbai. Up to the year 1999 in the entire correspondence and the judicial proceedings as stated above there is no reference with regard to the existence of plaintiff society. No material is placed on record to show that the plaintiff society was engaged in building the ISKCON movement in the state of Karnataka and in particular in Bangalore city.

66. P.W.1 admits in his evidence that there arose differences between Madhupandit Das and defendant No.1 on theological issues in ISKCON movement. Defendant No. 1 in their written statement admits that these theological differences commenced in the year 1999. On account of these theological differences a group of devotees at Bangalore requested the defendant No.1 to permit them to start a second branch of ISKCON at Bangalore. Accordingly

HIGH COURT OF KARNATAKA BANGALORE

defendant No.1 gave permission and a second branch was commenced at Bangalore. Aggrieved by this act of defendant No. 1 and the group of ISKCON devotees Madhupandit Das, as President of first defendant's branch, filed a suit in O.S. No. 4467/2000 to declare the starting of second branch at Bangalore as null, void and illegal and for permanent injunction. In this O.S. No. 4467/2000 though a temporary injunction was sought for, the same was not granted. Again Madhupandit Das, as President of Bangalore branch, filed another suit in O.S. No. 1483/2001 to declare the amended Rules of defendant No. 1 as null and void and to declare that defendants have no authority to remove Madhupandit Das as President of Bangalore branch. Even in this O.S. No. 1483/2001 temporary injunction was not granted. In the meanwhile, defendant No.1 issued a meeting notice dated 02.02.2007 to consider several issues including suspension of Madhupandit Das as President of Bangalore branch.

67. On one side, theological differences. On the otherside, the action of defendant No. 1 to suspend Madhupandit Das. Further, Madhupandit Das failed to get temporary injunction in O.S. No. 4467/2000 and O.S. No. 1483/2001. At the same time Madhupandit Das and his associates were not ready to give up their control and authority over the huge assets of Bangalore branch. Richer the endowment, greater will be the temptation to swallow the same. Under these circumstances, Madhupandit Das and his associates conspired to claim right of ownership not only over the income, but over the idol, the deity of the temple and the entire assets of the temple. Madhupandit Das and his associates had taken advantage of identical name of plaintiff society's "International Society for Krishna Consciousness" and the defendant's branch "International Society for Krishna Consciousness". This is how Madhupandit Das and his associates started claiming that there was no defendants' branch at Bangalore and the ISKCON movement at Bangalore was

built by plaintiff society and the schedule properties belong to the plaintiff society.

68. Taking advantage of similarity in the name of plaintiff society and the defendants' branch at Bangalore a person by name Ananda Samant claiming to be a member of plaintiff society filed a suit in O.S. No. 4169/2001 on the file of City Civil Court at Bombay against defendant No. 1 and others for declaration the amended Rules of defendant No. 1 null and void and restraining the defendant from removing Madhupandit Das as President of plaintiff society. For the first time the existence of plaintiff society and its functioning at Bangalore was mentioned in this O.S. No. 4169/2001. On misrepresentation an interim order of status-quo was obtained in the said suit (O.S. No. 4169/2001). The defendant entered appearance, filed written statement, objections and requested to vacate the interim order. The City Civil Court at Bombay, by order dated 06.08.2001 vacated the status-quo order and refused to grant



temporary injunction. The plaintiff in O.S. No. 4169/2001 filed an appeal before the High Court of Judicature at Bombay in A.O. No. 709/2001 and the same came to be dismissed with an observation as under:

> "In this context, it is pointed out that a soleman statement was made before this Court by the appellant (Anand Savanth) on August 7, 2001 that respondent No. 17(Madhupandit Das) and 18 (ISKCON, a society registered under Karnataka Societies Registration Act) have not filed suits for similar reliefs in any Court. No doubt, reference has been made to suit filed before the Court of City Civil Court, Bangalore, being original suit No. 1483/2001, in para 27 of the Plaint. The plaint however, does not clearly state the nature of reliefs prayed in the said suit, whereas very specific statement was made before this Court on 7th August 2001 that neither respondent No. 17 nor respondent NO. 18 has filed any suit for similar reliefs. However, the respondent No. 4 has now produced on record the plaint as presented by respondent No. 17 before the City Civil

COURT OF KARNATAKA AT BANGALORE

Judge, Bangalore which clearly indicates that the reliefs claimed therein are more or less similar to the one in the suit filed by the appellant. In that sense, the statement made before this Court was inaccurate, as would be evidence from the order passed by this Court on August, 7, 2001. It would be seen that this Court was persuaded to grant status-quo essentially because neither the respondent No. 17 nor respondent No. 18 had filed suit for similar reliefs. However, now, it is brought to the notice of this Court that, besides respondent No. 17 taking advantage of observations made by this Court in the present appeal, even the respondent NO. 18 has instituted another suit before the City Civil Court at Bangalore being O.S. No. 7934 of 2001. In para 25 of the said suit, copy whereof is produced before this Court, it is stated that this Court has advised filing of such a suit by the respondent No. 18. No doubt, efficacy of that statement will be examined before the appropriate forum. To my mind, prima facie, respondent Nos. 17 and 18 and the present appellant together have obviously indulged in forum



shopping. This is nothing but abuse of process of Court. I shall refrain from making any further observations in this behalf at this stage."

69. In the meanwhile Madhupandit Das and his associates manupulated the accounts in the name of plaintiff society and got audited from an auditor by name V.L. Varadaraj for 12 years from 1989 to 2000. These audited reports were filed in the name of plaintiff society for the first time in March 2002. The very same auditor V.L. Varadaraj audited the accounts of Bangalore branch from 1982 to 2000 as per Ex.D.9 to Ex.D.37. Against this professional misconduct of V.L. Varadaraj the defendant No. 1 complained to the Institute of Chartered Accountants of India. The auditor questioned the proceedings against him in W.P. No. 26700/2005 and the same came to be dismissed. Thus it is clear that an attempt was made to give life to the defunct plaintiff society.

70. Further, Madhupandit Das, his wife Bhakti Lata Devi Dasi, his co-brother Chandhalapathi Das, his wife's sister Chamari Devi

HIGH COURT OF KARNATAKA

Dasi and other close associates cooked up reports specifying the names of these persons as elected office bearers of plaintiff society and filed the same in the office of Registrar of Societies for the first time on 21.08.2001 for the entire period of 12 years from 1989 to 2001. As already stated these reports are cooked up for the purpose of giving life to the defunct plaintiff society.

71. Similarly, a round rubber seal of plaintiff society was affixed on some of the correspondence with the BDA and Telephone department. Resolution books are prepared for the purpose of claiming suit properties as plaintiff society's properties. Thus it is manifest that Madhupandit Das and his associates, by taking advantage of similarity in the name, are falsely claiming the schedule properties in the name of plaintiff society. Hence, point No. 6 is answered in 'affirmative'.



On point No. 7

72. For the reasons stated on point Nos. 1, 4, 5 and 6 the plaintiff - society has miserably failed to prove and establish that it is the absolute owner in possession and enjoyment of plaint schedule properties. On the other hand, it is found that the plaintiff, a defunct society, by taking advantage of similarity in the name of Bangalore branch of defendant No.1 and by fabricating documents, is falsely claiming the plaint schedule properties. There is no evidence on record to show that plaintiff society built the ISKCON movement in the State of Karnataka and it acquired the schedule properties. Therefore point No. 7 is held in the 'negative'.

On point No. 8

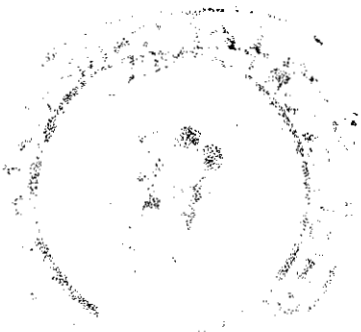
73. Defendant No. 1 admits that they are having branch at Bangalore, Madhupandit Das as its President. It is further admitted the ISKCON Bangalore has built the Krishna movement in the State of Karnataka it has acquired the plaint schedule properties and it is in possession of the same. Further, it is also admitted that the

HIGH COURT OF KARNATAKA

branches of defendant No. 1 including the ISKCON Bangalore enjoy certain degree of autonomy. When the ISKCON Bangalore, as branch of defendant No. 1, is in possession of plaint schedule properties the plaintiff society and its office bearers have no manner of right to interfere with the functioning, managing and administering the plaint schedule properties. Therefore the plaintiff society, its office bearers or any other person or persons claiming under it are to be restrained from interfering with possession and enjoyment of plaint schedule properties by the Bangalore branch of defendant No. 1.

74. Admittedly, Madhupandit Das and other full time devotees are heading the branch of defendant No. 1 at Bangalore. Therefore, Madhupandit Das and other functionaries in their capacity as President and functionaries of ISKCON Bangalore, as branch of defendant No. 1 are entitled to continue to function in accordance with the bye-laws, Rules and Regulations of defendant





No. 1. However, it is made clear that their continuance as such shall be subject to the decision to be taken by ISKCON, Mumbai, in accordance with the bye-laws, Rules and Regulations of defendant no.1.

75. For the reasons stated above, the following;

ORDER

i. The appeal is hereby allowed with costs.

ii. The judgment and decree dated 17.04.2009 passed in O.S. No. 7934/2001 on the file of the learned IX Additional City Civil and Sessions Judge, Bangalore is hereby set aside.

iii. The suit of the plaintiff in O.S. No. 7934/2001 is hereby dismissed.

iv. The counter claim of defendant No.1 is hereby decreed restraining the plaintiff society, its office bearers or any other person or persons claiming through or under it from interfering with possession and enjoyment of

HIGH COURT OF KARNATAKA

plaint schedule properties by the ISKCON Bangalore – the branch of defendant No. 1.

v. Ordered accordingly.

Sd/-
JUDGE

Sd/-
JUDGE

DKB/LRS

(a) The date on which the application was made 25/5/14

(b) The date on which charges and additional charges if any are called for

(c) The date on which charges and additional charges, if any are deposited/paid

(d) The date on which the copy is ready 25/5/14

(e) The date of notifying that the copy is ready for delivery 25/5/14

(f) The date on which the applicant is required to appear on or before 30/5/14

(g) The date on which copy is delivered to the applicant 25/5/14

(h) Remarks

TRUE COPY
Section Officer
High Court of Karnataka
Bangalore-560 001.
25/5/14